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McGILL UNIVERSITY FACULTY OF LAW
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March 10, 1992
le 10 mars, 1992

THE PIT AND THE PENDULUM

By Michael Wilhemson, Nat. IV and
E.A. Poe (deceased)

I was sick — sick to death with that long agony; and when they at length unbound me, and I was permitted to sit, I felt that my senses were leaving me.

— Just another class of Security on Moveables, you say? No, this time it was different: the class was more entertaining than usual. But as I stumbled down the stairs to the Pit, I felt the blackness of darkness supervene; all sensation appeared swallowed up in a mad rushing descent as of the soul into Hades. Then, silence, and stillness, and night were the universe.

This was not the way to begin Study Week: imprisoned in a damp, lightless

pit in the Faculty of Law. A damp, lightless pit would have been manageable.

When I regained my senses, I determined to calculate the circumference of the Pit. I removed a shoe and placed it by the wall. I then preceeded to count out paces, always maintaining my position against the wall's slimy surface. Several hours later, I determined that I had lost my shoe.

Suddenly, there appeared before me a horrifying apparition — morbid and ghoulis. It was a portrait... of the Addam's Family? No — more terrifying — the Faculty of Law graduating class of 1923!! I saw clearly the doom that had been prepared for me!

Shaking from every limb, I was driven by

unseen forces towards SAO. I resisted with all my failing forces, for I knew what the response of the inquisitors there would be. «No, your factum has not been returned.»

Onward, they dragged me, past the Dean's office and the mummified remains of his student appointments from last week; past that hideous padded door from whence many a Dean hath escaped; past the McGill Daily rack where, at some unheard command, copies flew up and covered my body like rats. I would have preferred the rats. Having evaded the Pit, the inquisitorial agents had fastened upon a more ingenious form of torture!

Securely bound, my back to the floor, a

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On the Legal Treatment of Sexual Assault in Canada

By Danièle MacKinnon, BCL II

Sheila McIntyre, professor at Queen's Faculty of Law, and advisor to LEAF, describes the current debate over the proposed amendments to the Criminal Code provisions on sexual assault as a «moment in history». Indeed, we will soon find out how committed our politicians really are to women's equality rights and to fighting pervasive sexual violence in society.

met with strong criticism and resistance from some «important» sectors. Among others, it has come under fire from Bar Associations and Criminal Lawyer's Associations, as well as civil liberties associations and REAL women. You've heard and seen the jokes about having to sign a written agreement before sex, having to «pull out» mid-intercourse, etc... These are ridiculous, exaggerated and dangerous characterizations of what the Bill actually accomplishes:

Already, the proposed amendments have

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ANNOUNCEMENTS - ANNONCES

FOURTH RENÉ CASSIN LECTURESHIP IN HUMAN RIGHTS - on Thursday, March 19 at 5 p.m. in the Moot Court, the Honourable Barbara McDougall Secretary of State for External Affairs, will speak on the topic of «Human Rights and Canadian Foreign Policy». Everyone is welcome to attend.

BARREAU DU QUÉBEC - We have information on the Bar Programme from the Barreau. Graduating students planning to attend the École du Barreau may pick up this newsletter at the SAO. Applications should be here no later than March 24.

EXAM NUMBERS - If you have verified your transcript you already have your Term II exam number. If not, we invite (no, urge) you to get it as soon as possible. Please don't wait until the day of your exam!

NOTICES - A note from SAO: please post notices only on those Notice Boards for which they have been assigned. And, please do not use the walls! Rather messy you know! We really don't want to pull them down but...

ENVIRONMENTAL LAW PRACTICE II - Yves Coriveau, former lawyer for Greenpeace will talk about his experiences working for an environmental group on March 11 at 12:00 in Room 203. Presented by E.L.A.M./A.D.E.M.

QUEBEC BAR TRAINING PROGRAM - Des représentants de la Formation professionnelle du Barreau du Québec rencontreront les étudiants qui envisagent de faire leur barreau et répondront à leurs questions sur le programme de Formation professionnelle, on Friday, March 20th at 2:30 p.m. in Room 102.

LEGAL THEORY WORKSHOP - On Friday, March 6th at 12:00 in room 202, Prof. Bernard S. Jackson will speak on «Prophet and Law in Early Rabbinics and the New Testament» Professor Jackson is the Queen Victoria Professor of Law, The University of Liverpool and the Gruss Visiting Professor in Talmudic Legal Studies at Harvard Law School. He is widely regarded as one of the worlds outstanding contemporary writers in the fields of semiotics and Jewish Law. Two

copies of his paper (which is some 15 pages in length) have been placed in Library Reserve for student use. No background is presupposed. All are welcome.

L'ASSOCIATION QUÉBÉCOISE DE DROIT COMPARÉ - organizes a lecture on «La réforme du droit des sûretés réelles» on March 12th, at 13:00 in the Moot Court.

ESSAY COMPETITION - The American Judges Association invites Law students to submit unpublished works for consideration in the Annual Law Student Essay Contest. Essays submitted must address a «topic of interest to the judiciary». Papers should be 10 to 25 pages in length. Extensive footnoting or endnoting is discouraged. Entries must be postmarked no later than June 30th 1992 and should be sent to: American Judges Association, Law Student Essay Competition, 300 Newport Avenue, Williamsburg, VA 23187-8797. Entry forms are available from Prof. Toope.

FORUM NATIONAL - Notice is hereby given to all members of Forum National of a General Meeting on March 11, 1992 Wednesday at noon in Room 201. Further, for those members who are interested in running for executive positions next year, an election will also be held on March 11, a list of those members who are eligible for running will be posted on the Forum National Board in the Pitt before the General Election. See you all there.

AWARDS NOMINATIONS: ALL STUDENTS ARE ASKED TO SUBMIT STUDENT NOMINATIONS IN THE LSA OFFICE FOR THE FOLLOWING AWARDS:

ALAN NEIL ASSH AWARD - for any student who has contributed to sporting endeavours of the law faculty this year.

PARTICIPATION AWARDS - for any student who has contributed to the faculty community through participation in extra curricular and co-curricular activities this year.

THE LSA AWARD - for any student in their graduating year who has made outstanding

contributions to the life of the faculty over their 3 or 4 years.

Nominations must be submitted by Friday March 20th. Inquiries may be directed to the social or sport coordinators at 398-6966.

LEGAL THEORY LECTURES - Prof. Norman Daniels (Chair, Dept. of Philosophy and Prof. of Medical Ethics, Tufts University) will speak on the following topics: «HIV-infected professionals, patient rights, and the "switching dilemma"» (Astra Lectures Series, Thursday, March 12 at 6:00 pm in the Moot Court) and «Equality of what: Welfare, resources or capabilities?» (Legal Theory Workshop, Friday, March 13 at 12:00 in room 202). Prof. Daniels is widely respected for his writing relating to health care and justice, the right to welfare, obligations to the elderly, medical ethics and a range of topics in contemporary political theory. The first discussion is pertinent to the issues of testing professionals and the duty to inform patients. The second has implications for the recognition of a right to welfare and, more generally, the possibility of a «social charter» in a modern democratic society.

SKIT NITE '92:

Rehearsal Schedule:

Mon. March 9: Pool Room

5:00-7:00 pm (skits)
7:30-9:00 pm (songs)
9:00 pm- ... (band)

Tues. March 10: Pool Room

5:00-7:00 pm (skits)
7:30-9:00 pm (songs)
9:00- ... (band)

Wed. March 11: Union Ballroom (3480 McTavish St., 3rd floor)

Dress Rehearsal: 6:00 pm (MANDATORY)
(All stage crew, actors, dancers, singers, musicians)

Thurs. March 12:
SHOW!!!
5:30 pm for make-up.

FOURTH RENÉ CASSIN LECTURESHIP IN HUMAN RIGHTS

The McGill Faculty of Law is pleased to announce that the Fourth René Cassin Lectureship in Human Rights will take place on Thursday, March 19th, 1992 at 5:00 P.M. in the Moot Court Room of the Faculty of Law. The Lectureship, which is co-sponsored by the McGill Faculty of Law and InterAmicus, will be given by the Honourable Barbara McDougall, Secretary of State for External Affairs, on the topic of «Human Rights and Canadian Policy».

The René Cassin Lectureship was inaugurated four years ago by the Honourable Madame Justice Claire L'Heureux-Dubé

of the Supreme Court of Canada, while the Second and Third René Cassin Lectureships were given, respectively, by the Honourable Walter Tarnopolsky of the Ontario Court of Appeal, and His Excellency Yves L. Fortier, former Canadian Ambassador to the United Nations.

Accordingly, with these precedents in mind, the Law School is delighted that the Honourable Barbara McDougall, one of the most experienced and distinguished Ministers in this government, has agreed to be this year's René Cassin Lecturer and Guest of Honour. Appointed Secretary of State for External

Affairs on April 21, 1991, she chairs the Cabinet Committee on Foreign Affairs and Defence Policy, sits on the Planning and Priorities Committee of Cabinet, and is a Member of the Cabinet Committee on Canadian Unity and Constitutional Negotiations.

The René Cassin Lectureship is one of a series of Annual Human Rights Lectureships organized by the McGill Faculty of Law in association with InterAmicus. It was established in 1988 in memory of, and to mark the centenary of, the birth of René Cassin, who received the Nobel Peace Prize in 1968.

McGill aura enfin son nouveau complexe sportif

par Hélène Mathieu, VP-affaires extérieures

En décembre dernier, des audiences publiques avaient lieu au Comité conseil d'arrondissement (CCA) de Montréal en vue d'obtenir l'autorisation pour la construction du complexe sportif de McGill. L'emplacement appartenant aux deux tiers à Montréal et étant situé sur le Mont-Royal, l'assentiment de l'Hôtel de Ville était une étape obligatoire dans le processus de réalisation. J'ai eu le privilège de faire une présentation aux conseillers municipaux afin de leur expliquer pourquoi ce nouveau complexe était tout à fait nécessaire pour améliorer la qualité de vie de la population montréalaise. C'est accompagnée d'une foule d'étudiantes et d'étudiants, soit trois personnes, que nous avons tenté de démontrer l'existence de ce besoin, et notre en-

thousiasme (!) à ce sujet. C'est sans aucune difficulté que le Comité a acquiescé à notre demande malgré l'opposition manifestée par certains groupes.

C'est environ une semaine plus tard que le SSMU m'a demandé de représenter les intérêts des étudiants face à ce projet à la Commission parlementaire sur l'aménagement et l'équipement de l'Assemblée nationale à Québec. Étant donné qu'il fallait amender la charte de la ville de Montréal, un projet de loi devait être présenté à l'Assemblée nationale et étudié article par article en commission parlementaire. C'est donc avec empressement que j'ai dû quitter la faculté après avoir complété mon dernier examen le 17 décembre dernier. C'est seulement à 23h45 le même jour que j'ai pu réitérer encore une fois, devant entre

autres le ministre Ryan et une douzaine de députés, notre volonté de voir se concrétiser ce projet que caresse les étudiants de McGill depuis 1981.

Ce n'est que le lendemain après-midi que les membres de la commission donnaient, après étude, leur aval à notre complexe sportif. Bien que la Charte de la ville de Montréal ait été amendée et qu'une entente de principe ait été conclue, il reste à parafer une entente finale entre l'Hôtel de ville et l'Université quant à l'utilisation communautaire des nouvelles installations.

Il nous reste à souhaiter que le débit de la construction se fasse dans les plus brefs délais afin que les populations universitaire et montréalaise puissent profiter du complexe sportif dans les plus brefs délais.

L.S.A. Office Elections will be held March 19, 1992

Sexual Assault ...cont'd from p. 1

(1) For the first time, *consent* is defined, both positively (what it is) and negatively (what is not).

(2) While the *Pappajohn* defence of «honest but mistaken belief», codified at 265(4) of the Criminal Code, is not repealed by the proposed legislation, section 273.2 of the Bill would limit its scope. The defence would no longer be available where the accused's «honest but mistaken belief» arises from (i) self-induced intoxication, (ii) recklessness or wilful blindness; or (iii) where the accused did not take all «reasonable steps in the circumstances known to the accused at the time to ascertain that the complainant was consenting».

The most criticized provision is probably that which requires «reasonable steps» in the ascertainment of consent. Critics argue that this reverses the onus of proof and leaves the prosecution free to point out a reasonable step that the accused should have, but did not take. This argument ignores the context in which this test will arise: what it really addresses is the «honesty» of the belief. If the accused's belief is based on myths about the complainant's sexuality and how she expresses her consent, can it really be characterized as «honest»? The bottom line here is that if an aggressor wants to

use the defence of «honest but mistaken belief» to show that he had no intent to rape, then it's up to him to show that he was not mistaken through his own fault.

With the exception of REAL Women, the Bill is heralded by women's groups as a victory and a significant step towards substantive equality before the law. The process of consultations through which the Bill developed is long-awaited recognition of the stake and expertise that women have in the law of sexual assault: according to Professor McIntyre, it was largely developed by sexual assault centre workers with input from a wide range of other sectors, including survivors' groups, women of colour, disabled persons, and child advocates.

A final note on the admission of evidence of the victim's past sexual conduct. The criticisms made by criminal and defence lawyers make me wonder about the integrity of the legal profession; defence lawyers know that bringing in a complainant's past sexual history is a sure way to discredit her and, probably, to guarantee an acquittal. And they know why: juries and judges are rarely free from stereotypes and myths about women's sexuality. These will *always* play against the complainant and in favour of the accused. These lawyers are not interested in getting at the truth, they

are interested in getting their client «off».

For those of you who think that the law has no place «in the bedrooms» (car seats, living rooms, alleyways, etc...) of the nation, please note that it's always been there. For those who think that the law has no place in social policy, please recall that the law of sexual assault was never neutral to begin with; it has always perpetuated and entrenched myths about women's sexuality and has nothing to protect them from sexual violence.

It is sad that we need a law to remind people of what should be given of human sexual relations; that they are for the benefit and enjoyment of both participants, as equals in society and before the law. While this law is not the answer to all our problems, and it will take our judicial system a long time to regain the trust of women, it is a significant step in the right direction and worthy of informed discussion and support, especially from us.

An information table will be set up in the Pit Monday March 9 to Wednesday March 11. Please come by to show your support for the Bill and/or discuss the amendments. A petition, sample letter, paper, postage-paid envelopes, and addresses will be available as part of a support campaign in favor of the Bill and of its remaining undiluted in its force.

The pit... cont'd from p.1

pendulum descended towards me, slowly and inexorably. At its glistening tip there had been affixed a three-volume Olmsted and a Black's law dictionary to boot. What sick legal mind could have imagined such a device?!

When all seemed doomed, above the metallic creaking of the pendulum, I began to hear an offpitch screeching. No, it was singing. Could it be? Yes, someone was singing the Moot Court Blues!

«Keep your eyes on the judge, your hands upon your briefs.

Keep your eyes on the judge, you hands upon your briefs.

Going to the Moot Court, gonna have a real good time.»

The Mooters had returned from the library. And though they were a strange bunch, I was saved.

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GREENSPACE: *It's Just a Fad Anyway. Isn't it?*

By Juli Abouchar, Nat. IV

Environmental issues come and go. If I wait long enough I can continue with business as usual. It will blow over.

These sentiments may be popular ones, but not if you take some time to consider just how deep society's environmental roots go. The answer - as far back as industrialization, at least.

The Romanticism which emerged in the late 18th and early 19th century celebrated the natural world, the irrational and emotional. It challenged the mainstream thought of the time which valued the urban, technical and rational. While Blackstone was setting down the foundations of positive law to order a civil society, Wordsworth was warning about death in the «dissolute city» and the urbanization of rural life.

The American Transcendentalists picked up on this general theme in the 19th century. Thoreau and Emerson were not just writing about the natural world. Thoreau used nature as an alternate source of truth from the urban setting's status quo values of ownership and property.

In the early 20th century, deeply influenced by the writings of Thoreau, conservationists like John Muir and Gifford Pinchot tried to put notions of wise management of forests and lands into U.S. law. Although criticized by modern «deep» ecologists, their efforts were a first step in incorporating nature into law and policy.

In the 1960s and '70s the Romantic values surfaced again with the counter-culture protests. Authors in the sixties added richly to today's environmental movement: Rachel Carson, Paul Ehrlich, Murray Bookchin, Theodore Roszak, to name a few. In addition, the concepts of «direct action» (Greenpeace) and the public interest group (Pollution Probe, Friends of the Earth, World Wide fund for Nature) were born, making possible citizen involvement in state decisions.

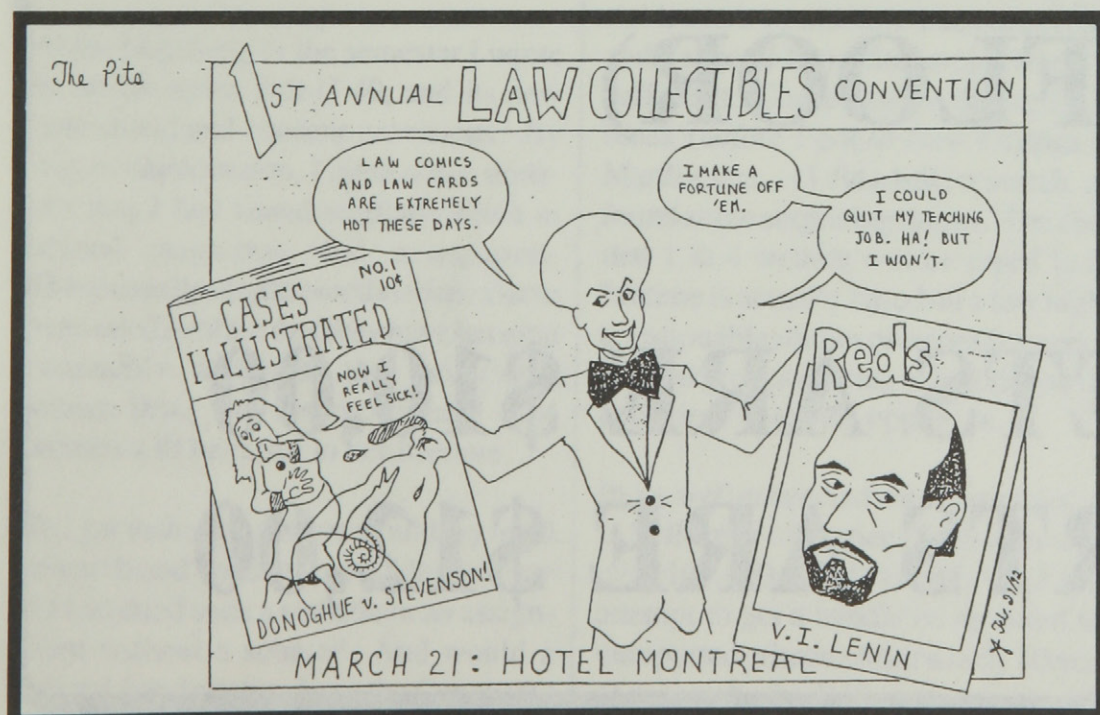
During the seventies and eighties, environmental legislation with protection and assessment aims were introduced. Many pieces of legislation have the hallmarks of those sixties protestors: for example mandatory public environmental assessment hearings, and increasingly stiff fines for corporate polluters. While some

of this legislation has been criticized as not going far enough, it has been another contribution to the solution.

We are again in a period of public attention on the environment. Deep ecologists are weaving religious mysticism with the simplicities of nature to encourage an «eco-centric» practice and philosophy. The pragmatists meanwhile are advocating «sustainable development», which means a redesignation of social and political structures to be environmentally sustainable, although corporate interests threaten to recycle the concept into something more akin to sustained development.

Will this be the last of the environmental movement? Given its long history in social thought, I suggest to you that the environmental movement will not «go away». Even if the rhetoric fades from politicians' mouths, and green advertising no longer cons the public, there will be continued attention paid to environmental concerns.

First, unfortunately, environmental crises, previously hidden, will continue to emerge, and on an increasingly bigger scale. Second, the last three decades have seen the birth of legislation, agencies, tribunals, and nongovernmental groups to address the known environmental concerns. These will be the focus for use as well as reform. As ineffective as some of them are, they can be sculpted into better forms, and will be a focus for debate and action. Getting these structures put into place was one goal of the environmental movement of the 1960's. Exercising the power they provide and improving upon them are the opportunities of the present.



SKIT NITE '92

**THURSDAY, MARCH 12TH
AT 8:00 pm IN THE UNION
BUILDING**

**(3480 McTAVISH ST., 3rd
FLOOR)**

TICKETS ARE \$10,00

T-SHIRTS ARE \$12,00